

Interpreting Taxing Statutes # 2 – Types of Act

An Act may be categorised as (a) public or private, (b) general, local, or personal (c) constitutional, treaty, or financial, (d) consolidating, codifying, declaratory, or clauses.^{^1}

SYNOPSIS

Public and Private Act

General, local and personal Act

General, treaty and finance Act

Consolidating, codifying, declaratory and clauses Act

Other descriptions

Public and private Act

In English jurisprudence, based on the judicial notice, an Act is classified as public and private. A public Act is judicially noticed as it dealt with a matter of public concern. A private Act, on the other hand, must be proved by anyone wishing to rely on it. Such distinction, however, has lost its relevance especially after English Interpretation Act 1978 s 3 which provides that “Every Act is a public Act to be judicially noticed as such, unless the contrary is expressly provided by the Act.”^{^2}

All the Acts passed by the Indian legislatures are public one and are judicially noticed vide BSA 2023 s 52(1)(a) [=IEA 1872 s 57(1)].

Public and private Bill - Mention may, however, be made of the distinction between Public Bill, Private Bill and Private Member’s Bill. Based on the parliamentary procedure of England, a Bill is classified as public, private, and private

¹ Bennion 2020 s 2.14

² Bennion 2020 p 60

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member's one. A public Bill is introduced by the government ministers. A private Bill is promoted by individuals or bodies seeking powers beyond, or in conflict with, the general law and are introduced by the government ministers based on their petitions. A private member's bill is introduced by a member of the legislative body who is not a government minister.

Where a private Act (ie an Act resulting from private Bill) is obtained by persons for their own benefit, then, as between the promoters and the public, it is to be construed strictly against the promoters.<sup>^3</sup>

In India, there is no concept of private Bill, rather the private member's Bill is often referred to as private Bill and there is no distinct rule of interpretation for them.

### **General, local and personal Act**

In English jurisprudence, based on the application, an Act is classified into general, local or personal. An Act is general if it applies in some way to the whole community. An Act is local if it applies to a particular locality but is of general interest to the community in that locality. An Act is persona if it is limited to particular individuals and is only of interest to them.

**Central and State Act** - In India, there is a distinction of central (or union or federal) and state (or unit) government. An Act made by the Parliament of India is a central Act and may apply to the entire or part of the territories of India (which may comprise one or more states and union territories of India), whereas the same made by a State Legislature is a state Act and may apply to the entire or part of the territory of the state of India. This fact is expressly mentioned in the extent clause of section 1 of an Act.

## Constitutional, treaty and finance Act

**Constitutional Act** - Unlike the English law where no written constitution exists and where the court identifies an Act as constitutional<sup>4</sup>, one may categorize the Constitutional Amendment Act as a special class because of the special procedure of its passage in the Parliament and ratification by the State Assembly [See Art 368].

**Treaty Act** - Acts that incorporate a treaty into domestic law, or otherwise implement a treaty, form a distinct class. An international treaty is not part of Indian law unless it has been incorporated by an Act of Parliament [See Art 253].

**Finance Act** - Finance Acts and other Acts dealing with taxation and appropriation of the public revenue form a distinct class emphasizing the dominant role of the lower house of the Parliament or the State Legislature [ See Art 109 and 198 specifying special procedure for Money Bills]. It is of constitutional importance that taxes should be levied fairly, collected honestly and without oppression, and expended in accordance with the will of the legislature.<sup>5</sup>

## Consolidating, codifying, declaratory, and clauses Act

Certain Acts serve the primary purpose of restating, clarifying or tidying up aspects of the law in order to make it more accessible and easier to use. These include consolidation Act and codifying Act.

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<sup>3</sup> Parker v Great Western Railway Co (1844) 7 Man & G 253 cited in Bennion 2020 p 61

<sup>4</sup> The examples of a constitutional Act in England are: Magna Carta, Petition of Right 1628, Bill of Rights, Act of Settlement 1701, Act of Union 1707, European Communities Act 1972, Human Rights Act 1998, Scotland Act 1998, Northern Ireland Act 1998, Constitutional Reform Act 2005, and Government of Wales Act 2006; cited in Bennion 2020 p 63

<sup>5</sup> Bennion 2020 p 63

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Consolidation – A consolidation Act brings together a number of existing provisions on a topic in a single Act.⁶

The provisions relating to the law on a given subject matter are often found in a series of Acts. As a consequence, investigation of the law on a given subject requires simultaneous reference to a number of separate Acts. This problem can be solved by a re-enactment of the scattered provisions into one Act. Consolidation is, thus, a process of combining the legislative provisions on a single topic into one coherent enactment. The earlier Acts are repealed and in their place is substituted a single Act which embraces the subject matter of the earlier Acts. The aim of consolidation is to allow for easy access to a particular subject matter on which there would have been numerous amendments to the law at different times. An important point to observe in the consolidation of legislation is that the Acts to be consolidated must be in respect of the same subject matter. It would be inappropriate to consolidate fiscal legislation with family law legislation. Furthermore, where legislation is strewn about into bits and pieces of different Acts, the Acts to be consolidated should be identified to ensure that all the Acts on the same subject matter have been brought together. This will reduce the likelihood of omitting an important piece of legislation in the consolidation exercise.⁷

A consolidating Act, therefore, is a summation of existing Acts on the topic. It may be with or without amendments.

Codification - A codifying Act restates the law on a topic, whether common law or statutory.⁸

⁶ Bennion 2020 p 64

⁷ Rajgopaul 1980

⁸ Bennion 2020 p 64

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In codification the various areas of the law, such as equity, the common law, orders of the executive and judicial decisions are examined and then condensed in the form of a code. In other words, the entire law on a particular subject matter is extracted from case law and any other relevant enactments, and placed into one single Act. This compilation is then used as the prima facie evidence of the existing law on that subject. ^9

A codifying Act, therefore, is a summation of existing Acts and case laws on the topic.

**Declaration** – A declaratory Act declare the meaning of an earlier Act for the purpose of clarifying or confirming the pre-existing law.^10 For instance, Sales Tax Laws Validation Act 1956 of the Union of India declared that the laws passed by the States imposing taxes on the sale or purchase of goods in the course of inter-State trade or commerce, though not in their competence but in the competence of the Union, is valid and shall be deemed to have been enacted by the appropriate legislature.

**Clauses** - A clauses Act sets out common-form provisions in order to shorten the new Act which incorporates it. For example, General Clauses Act 1897 contains clauses which are not required to be provided in a new Act.

### Other descriptions

A number of others distinctions have been drawn over the ages between different types of legislation, for example those between enabling (or enlarging) and restraining statutes, obligatory and permissive statutes, declaratory and remedial statutes, affirmative

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<sup>9</sup> Rajgopaul 1980

<sup>10</sup> Bennion 2020 p 65

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(or positive) and negative statutes. To this list may also be added Acts of indemnity, amnesty or oblivion. These distinctions or descriptions are either obsolete or of little practical relevance and are not discussed further.¹¹

¹¹ Bennion 2020 p 66